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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 870

ROBERT B. CURTIS, WILLIAM L. CLAY, REV. CHARLES PERKINS, LUCIEN RICHARDS, NORMAN R. SEAY,
Petitioners,

vs.

WILLIAM BOEGER, Warden, St. Louis City Jail,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

CHARLES R. OLDHAM,
706 Chestnut Street,
St. Louis, Missouri,
Attorney for Petitioners.

ROBERT B. CURTIS,
2847 Union Boulevard,
St. Louis, Missouri,
Pro Se.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

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To the United States Court of Appeals for the Eighth Circuit.

Petition for writ of certiorari to review a judgment of the United States Court of Appeals for the Eighth Circuit entered in the above entitled cause July 6, 1966, infra, p. 35, rehearing denied August 16, 1966.

CITATION TO OPINIONS BELOW.

The opinion of the St. Louis Court of Appeals is reported at 374 S. W. 2d 557. The opinion of the United States District Court can be found at 240 F. Supp. 475,

the opinion of the United States Court of Appeals is reported at 362 F. 2d 999. The decision of the Supreme Court of Missouri is unreported, but is printed in the appendix hereto, infra, p. 53.

JURISDICTION.

The judgment of the United States Court of Appeals was entered July 6, 1966. Motion for rehearing was denied by the Eighth Circuit, August 16, 1966, infra, p. 52. Petitioners' time for filing petition for writ of certiorari was extended to and including December 16, 1966 by an order signed by Mr. Justice White on November 12, 1966. Jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED.

1. Whether First Amendment rights are unconstitutionally infringed when procedures under Missouri law permit a judge to (a) issue a broad and vague *ex parte* injunction (b) serve the injunction on short notice giving no time for leaders to explain it to the pickets (c) require bail of $10,000 each (d) try persons for contempt before the same judge who issued the injunction, without a jury (e) give unlimited fines and jail sentences (f) deny right of appeal, leaving only the remedy of habeas corpus (g) appoint prosecutor with a special interest in the outcome of the case. Whether appellate courts were required to apply the facts of the case to existing constitutional standards for the protection of First Amendment rights.

2. Whether state jurisdiction to issue an injunction was preempted by the National Labor Relations Board. Whether, if state jurisdiction was not preempted, the procedural standards of the Norris-LaGuardia Act apply to state courts in labor injunction cases. Whether the doc-

trine of **United States v. United Mine Workers** was misapplied in this case by the courts below. Whether the refusal of the trial judge to hear evidence pertaining to the nature of the labor dispute and the issue of federal preemption deprived petitioners of due process of law.

3. Whether sentences and fines of more than six months and $300 respectively imposed without jury trial are constitutionally permissible in state courts.

4. Whether the appointment of a prosecutor with a "special interest" in the outcome of a case, who (a) tried petitioners' cases in the newspapers, television and radio (b) who caused a large advertisement pertaining to the case to be published in the daily press before judgment was rendered (c) who assisted in the publishing of a statement by the St. Louis Bar Association pertaining to the case, deprived petitioners of their right to a fair and impartial trial.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

1. This case involves the First, Fifth, Sixth and Section one of the Fourteenth Amendments to the Constitution of the United States.

2. This case involves the National Labor Relations Act, 29 U. S. C. A., § 151, et seq., and the Norris-LaGuardia Anti-injunction Act, 29 U. S. C. A., § 101, et seq.

3. This case involves Mo. R. S. 1959 as amended, § 476.120, as follows:

> "Punishment for contempt may be by fine or imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court."

STATEMENT OF THE CASE.

The St. Louis Committee of Recial Equality commonly referred to as CORE, is a branch of the national organization known as the Congress of Racial Equilty. St. Louis CORE has sought to alleviate racial discrimination in public accommodations, housing, government and employment. In the past fifteen years, CORE has negotiated with all types of business enterprise in order to secure jobs and upgrading for Negroes.

In 1961 St. Louis CORE set up a special committee for the purpose of negotiating with banks in the City of St. Louis. The then current statistics showed that out of 5,000 persons working in clerical or teller positions in St. Louis banks, only 35 were Negroes. These figures were interpreted by CORE as reflecting a general pattern of discrimination against Negroes in the banking industry. Figures current and on hand as of June, 1963, indicated that Negroes represented about 30%, of the population of St. Louis and also that unemployment figures for Negroes were 2½ times as high as for white persons. It is against this backdrop that the campaign for jobs and for employment at the Jefferson Bank and Trust Company began.

On August 14, 1963, after two years of futile negotiations, CORE sent a letter to Jefferson Bank asking that the bank hire four Negroes in teller or clerical positions within two weeks (Tr. C. 10, 11). The bank replied with a written communication denying the request (Tr. C. 17, 18). Later, St. Louis CORE sent a committee to the bank for a conference urging the bank to act favorably on the request for the employment of Negroes or to consider alternative plans for hiring Negroes as employees were replaced because of normal turnover (Tr. C. 20, 24).

On Sunday, August 25, 1963, the matter was discussed at a regular meeting of St. Louis CORE and the group

voted to take direct action against the bank if the request was not complied with. The time set for the picketing of the bank was from 4:00 p. m. to 6:00 p. m. on Friday, August 30, 1963 (Tr. C. 663).

On Thursday, August 29, 1963, the Jefferson Bank filed its petition for an injunction in the Circuit Court of the City of St. Louis, Michael J. Scott, Judge, and applied for a temporary restraining order. At a CORE strategy meeting the same night the Committee voted to picket the bank and then by a separate motion by a count of 18 to 13 voted that individuals could risk arrest by standing at the front door of the bank (Tr. C. 743).

Picketing at the bank took place between 4-6 p. m. on August 30. At about 5:10, 8 of the pickets stood in front of the bank door. After a sheriff deputy pushed them to the ground about 50 pickets entered the bank, sang songs and sat in front of teller's windows. They remained there for half an hour. There was no violence, cursing or property damage or arrests made nor were the police requested to arrest anyone (Tr. C. 411, 416a-417). Petitioners Curtis, Clay, Seay, and Perkins did not picket, sing, clap inside the bank. Petitioner Richards did sing inside but did not obstruct teller's cages or any bank activity. None of the petitioners stood in front of the bank's door, nor did they encourage others to do so.

The evidence as to each picketer is as follows:

Petitioner Robert B. Curtis: Witness Feely, a professor at Lindenwood College, stated that Curtis recommended at the Thursday strategy meeting that persons should not disobey the injunction if issued (Tr. C. 778, 798). Witness Ford testified that Curtis urged the group to obey the restraining order on Friday, just before the pickets stood in front of the bank door (Tr. C. 855, 856). Witnesses Feely and Kimbrough, a deputy city marshal, stated that Curtis urged the group to listen to Attorney Howard's

advice about obeying the injunction (Tr. C. 756, 1493). Witness Howard testified in a similar vein (Tr. C. 1427). Officer Sullivan testified that Curtis called for a show of hands of those willing to block the bank's door (Tr. C. 1105). Witnesses Kimbrough, Howard and Ford stated that it was Carl Farris that called for the show of hands and that none of petitioners raised his hand (Tr. C. 1497-9, 850, 858, 1428, 1447). Several witnesses testified that Curtis entered the bank at about three minutes to 6:00 and urged the pickets to leave at 6:00 (Tr. C. 52, 122, 124, 134, 305, 763, 530, 871, 990, 695). Witness Howard testified that at about 5:50, Howard, Charles Oldham, and Curtis got together to devise a plan to get the pickets out of the bank. They decided to use "closing time" as a reason for asking the pickets to leave (Tr. C. 1431-33). Officer Scott remembered seeing Curtis conversing with two people outside the bank about this time (Tr. C. 476, 476a). He also heard Curtis say, "I think I shall go in there and inform them that they are at their own risk, that they're doing this at their own risk", just before he went into the bank to request that the pickets leave (Tr. C. 478).

Petitioner William L. Clay: Witnesses Ford and Howard testified that Clay at 5:10 urged the pickets not to violate the injunction (Tr. C. 859, 1421). Deputy Sheriff Linton stated on direct examination that he heard Clay say, "We'll go in" (Tr. C. 260), however, on cross-examintation, he said, "I am 90% sure it was Mr. Clay (Tr. C. 68-9), "I wasn't paying no attention to the activity out there" (Tr. C. 269). Major Ruff who was located in the fourth floor of the Guth Building several hundred feet away from the bank, testified that he saw Clay motioning to pickets to go into the bank (Tr. C. 383-6). However, Officer Scott who was standing on the sidewalk less than ten feet from the bank testified that he saw a group of pickets walk down Jefferson and go into the

front door and was positive Mr. Clay was not there (Tr. C. 472-3). James Jones, deputy sheriff, also stated, "I am quite sure someone spoke to him (Clay) and he said, 'don't go in the bank'" (Tr. C. 1486).

Peitioner Norman R. Seay: Witness Howard testified that Seay spoke against violation of the restraining order at the gathering on the Guth Building parking lot, Friday at 5:10 (Tr. C. 427). Witnesses Howard and Kimbrough stated that Seay and the other petitioner did not raise their hands (Tr. C. 1428, 1447, 1499). Officer Beech testified that Seay was standing near the curb on Washington Avenue and told a female picket to move back because some people were getting behind her (Tr. C. 330-338).

Petitioner Charles Perkins: Witness Daly testified that Perkins urged him not to stand in front of the bank door and almost persuaded him not to (Tr. C. 1013-14). Perkins observed the front door when pickets were knocked down by Deputy Sheriff Linton. At this point Perkins entered the bank and spoke to Sheriff Tozer about "sheriff brutality" (Tr. C. 334, 694, 360). His gesticulation when addressing Sheriff Tozer were interpreted as acting like a director by Deputy Sheriff Jones (Tr. C. 1487). Officer Scott stated that he did not see Perkins sing, clap or sit on the floor (Tr. C. 543). He did not interfere with bank business (Tr. C. 102, 205, 309, 342, 543).

Petitioner Lucien Richards: Richards went into the bank and participated in the singing and hand clapping (Tr. C. 54, 1541, 693). He did not sit on the floor or stand in front of teller's cages and he left the bank at 6:00 with the other pickets.

Witnesses Ford, Feely and Daly testified that none of the petitioners encouraged them to go into the bank (Tr. C. 875, 773, 780, 1019). There were no witnesses who

testified that they were encouraged by petitioners to violate the restraining order. There was no evidence that petitioners violated the restraining order themselves.

An *ex parte* writ of attachment issued against petitioners and four others on Saturday night, August 31st, and bail was set at $10,000.00 each. Two persons were arrested later the same night and the other seven appeared at the City Jail on Sunday afternoon. A hearing was set for Tuesday, September 3rd before Judge Scott. Petitioners requested a continuance and that bail be lowered to a reasonable amount, and to be informed of the charges against them. The court denied all requests (Tr. C. 14-25, 9/3/63).

After a postponement for filing a writ of prohibition and to take depositions, notices of contempt were filed on September 18th. The trial began on September 23rd and petitioners and four others were convicted and sentenced on October 24, 1963 (Tr. C. 1558-1638). They were denied bail, time to set their affairs in order and the right to appeal (Tr. C. 1638-9).

REASONS FOR GRANTING THE WRIT.

I.

Certiorari Should Be Granted to Determine Whether Petitioners' Rights Under the Due Process and Equal Protection Clause of the Fourteenth Amendment Were Infringed by Their Conviction for Criminal Contempt Where the Injunction They Are Charged With Disbbeying Is in Violation of Their First and Fourteenth Amendment Rights.

The Court below has held at 302 F. 2d 999, 1007 that petitioners did not raise their First Amendment claim in the state court or in the U. S. District Court and there-

fore the issue was not fairly or adequately raised at the level of the Circuit Court of Appeals. This contention is hard to understand since the St. Louis Court of Appeals specifically ruled on this question holding:

> "The activities of the petitioners found herein to constitute contempt go far beyond those areas of freedom of speech and peaceful assembly protected by the Constitution of the United States and of Missouri. It has been held that the First Amendment does not confer the right to persuade others to violate the law. Kasper v. Brittain, 6 Cir., 245 F. 2d 92." **Curtis v. Tozer**, 374 S. W. 2d 557 at page 595.

Similarly, it is difficult to see how petitioners' First Amendment claims can be defeated simply because the issue was ignored and not passed upon by the U. S. District Court. The Supreme Court has always claimed the right to enforce constitutional liberties even when denied through spurious findings of fact in the lower courts. **Milk Wagon Drivers v. Meadowmoor Dairies**, 312 U. S. 287 at pages 298-9.

(A) **The ex parte injunction of August 30, 1963, infringed petitioners' rights under the First and Fourteenth Amendments and is therefore void on its face and as applied.**

The Injunction was vague and too broad.

Although picketing per se was not barred by the injunction, it is impossible for a lawyer (not to mention a layman) to tell what activity was permitted or prohibited. For example what does it mean when the injunction says in paragraph (a) "Physically hindering, obstructing, interfering with, delaying, molesting or harassing" or (b) "And therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees" or (c) "Physically hindering, obstructing, interfering with, intimidating

or in any other manner preventing customers''? We are not informed as to what conduct constitutes ''annoys'' or ''harasses.'' The plain fact is that conduct which may ''annoy'' or ''harass'' one person may not have the same effect on another. It is quite possible that picketing or the very presence of CORE members at the bank ''annoyed'' or ''harassed'' the bank's officers and employees. On the other hand many of the bank's customers were glad to see CORE attempting to get jobs for Negroes and some joined the picket line. Also the purpose of a picket line is usually designed to deprive an employer of business and therefore to ''interfere'' with business. It is therefore quite apparent that the injunction herein is far too broad and vague in its terms and it therefore included constitutionally protected as well as non-protected activity. Compare **Apetheker v. Secretary of State**, 378 U. S. 500, 515-518, and **NAACP v. Button**, 371 U. S. 415, 433-438.

(B) **Both the St. Louis Court of Appeals and the United States Court of Appeals for the Eighth Circuit have failed to apply the proper standards for the determination of petitioners' rights under the First Amendment.**

The St. Louis Court of Appeals 374 S. W. 2d 557, 595, and the U. S. Court of Appeals, 362 F. 2d 999, 1007, have said in substance that the conduct of petitioners goes far beyond the realm of protected free speech. We are not informed as to the character of the specific conduct and/or speech involved herein. Both court opinions summarily dismissed petitioners' contentions without applying the facts to the clear and present danger test as prescribed by the Supreme Court for contempt cases involving the First Amendment. Compare **Wood v. Georgia**, 370 U. S. 375; **Pennekamp v. Florida**, 328 U. S. 331; **Bridges v. California**, 314 U. S. 252; **Kasper v. Brittain**, 245 F. 2d 92, 96. Contempt, like insurrection, advocacy of unlawful acts, breach of the peace, obscenity and solicitation of legal business is not immuned from constitutional limitations

and therefore, must be measured by standards that satisfy the First Amendment. **New York Times v. Sullivan**, 376 U. S. 254, 269.

In order for free speech to be punished or curtailed by contempt of court there must be a clear and present danger to a vital state interest—not the private interest of a business institution. See **Herndon v. Lowery**, 301 U. S. 242, 258. In **American Federation of Labor v. Swing**, Justice Frankfurter speaking for the Court said at 312 U. S. 321, 326:

> "Communication by such employees of the facts of a dispute deemed by them to be relevant to their interests can no more be barred because of concern for the economic interest against which they (the pickets) are seeking to enlist public opinion than could the utterance protected in Thornhill's case."

The question of exactly what utterances were made by petitioners and how such utterances caused violation of the injunction is now more confused than ever. The St. Louis Circuit Court making no specific findings of fact simply copies verbatim from the allegations contained in the notices of contempt which were the same for each petitioner (Tr. C. 1558-1638). The St. Louis Court of Appeals attempted to remedy this defect by making findings as to how each petitioner might have "encouraged" by word or gesture, violation of the restraining order. These findings were arrived at by considering only the evidence which tended to support the trial court's finding of guilt. **Curtis v. Tozer**, supra, at pages 577-584. However, the U. S. Court of Appeals making no findings as to the conduct of specific individuals, remarkably concluded that "In the demonstrations, the petitioners blocked the entrance to the bank by standing in front of the entrance locking arms and blocked entrance to the tellers' windows by sitting and lying in front of such windows." See **Ford v. Boeger**, 362 F. 2d 999, 1003. This

confusion undoubtedly resulted from the fact that the court consolidated three separate contempt cases for purposes of briefing and argument, and then failed to distinguish between the facts of each case. This was the first time that any court has held that petitioners did anymore than "encourage" others to violate the restraining order.

The trial court's judgment of contempt seemingly rests solely on the ground of petitioner's alleged utterances which were said to have caused violation of the restraining order. Petitioners have consistently denied that they advocated violation of the restraining order and the transcript contains conflicting testimony much of which points to the opposite conclusion—that, in fact, petitioners urged compliance with rather than violation of the injunction. It is to be noted that the trial court found Raymond Howard guilty of contempt even though all of the evidence pointed to the fact that he urged compliance with the Court's order. See **Curtis v. Tozer**, supra, at page 580.

Neither of the courts below made any finding or conclusions appraising petitioners' statements in accordance with the standards set down in **Bridges**, supra; **Pennekamp**, supra; and **Wood**, supra. Nor was there any effort to prove that said utterances or gestures caused others to violate the injunctions.

Petitioners had a right under the First Amendment to say that the injunction was unfair or to protest "sheriff brutality" when a deputy sheriff pushed several small children to the ground. They were free to state before the television cameras their attitude toward the injunction or even that the judge erred in issuing the injunction (although they did not). They had a right to ask the pickets to leave the bank without having to risk the request would be interpreted by the St. Louis Court of Appeals as an invitation to continue violating the injunction. Compare (Tr. C. 1431-3) with **Curtis v. Tozer**, supra,

at 582; **Craig v. Harney**, 331 U. S. 367, 375-377. As Mr. Justice Brennan wrote in **In Re Sawyer**, 360 U. S. 622, 635, "Dissenting opinions in our reports are apt to make petitioner's speech look like tame stuff indeed."

(C) **The procedure used for the hearing on the issuance of the injunction and the methods employed for petitioners' arrest, bail, trial and appeal failed to provide the safeguards necessary for the protection of First Amendment rights.**

(1) The suit for temporary restraining order was filed on August 29, 1963. The **ex parte** order was issued at 2 p. m., August 30, 1963, without notice and hearing. The trial court elected not to hold a hearing on the matter until September 26, 1963—almost a month after the issuance of the restraining order making it impossible to test the legality of the restraining order until that time and creating fear in the minds of those who would desire to peacefully picket but for the existence of the restraining order. In this respect the restraining order constituted a prior restraint on the exercise of First Amendment rights and it cannot stand for that reason alone. **Thomas v. Collins**, 323 U. S. 516; **Near v. Minnesota**, 283 U. S. 697.

(2) The injunction was not served on petitioners until 5:00-5:30 p. m.—after the picketing of the bank had been in progress for at least an hour. There was no time to call a special CORE meeting to call off the picket line or to advise all participants as to the terms of the injunction and to warn against violation. It is difficult enough to plan and execute a picket line when large numbers of unknown persons participate and the possibility of racial antagonism exists, without having to cope with an **ex parte** injunction handed out while protest is in progress. Petitioners clearly did not have fair warning of the existence of the **ex parte** injunction or its terms. An injunction should not be used to serve as a means for the harassment of selected individuals or as a trap for the unwary.

(3) Although no arrests were made at the bank on Friday, August 30, the trial court issued a writ of attachment on Saturday night, August 31, against nine so-called leaders of CORE. Bail was set at $10,000 each. Of the nine persons selected for attachment only one had picketed inside of the bank. Petitioners were later tried for contempt of court before the same judge who issued the injunction, without a jury, and sentenced to jail terms ranging between 60 and 270 days and fines of $500-$1,000. No appeal is allowed from a judgment of criminal contempt in Missouri and there is no limit on the length of sentence or the amount of fine a prosecuting judge is permitted to hand out.

Petitioners submit that these procedures are lacking in elementary due process for any civil or criminal case but when First Amendment rights are involved the lack of procedural safeguards is all the more glaring. See **Speiser v. Randall**, 357 U. S. 513.

II.

Certiorari Should Be Granted to Review the Holding That State Jurisdiction Was Not Preempted by the National Labor Relations Act: That the Norris-LaGuardia Act Does Not Apply to State Court: and That the Supreme Court Decision in United States v. United Mine Workers, 330 U. S. 258, Is an Alternative Reason for Denying Petitioners Relief.

(A) In its opinion the court below assumed that CORE is at least arguably a labor organization and that the dispute is a labor dispute covered by the act. See **New Negro Alliance v. Sanitary Grocery Co.**, 303 U. S. 552; **San Diego Building Trades Council v. Garmon**, 359 U. S. 236.

The Court below then concludes that no preemption exists because state courts retain jurisdiction to use the

injunctive process where violence exists. Then in footnote No. 3 the Court states: "At the time the sentences were imposed the repetitive violent demonstrations created a situation which required effective state action to re-establish law and order." 362 F. 2d 999, 1008. There was absolutely no violence by any picket at Jefferson Bank either before or after the restraining order was issued. All prosecution witnesses verified this fact, and there were no arrests at the bank on August 30, 1963. (See testimony of Major Walter Eitzman, Scene Commander in Appendix.) The finding of violence by the court below is especially surprising when one considers that no such findings were made by the trial court or the St. Louis Court of Appeals, **Curtis v. Tozer**, supra. It is to be noted that the court below affirmed the denial of evidentiary hearing on the ground that "no facts are in dispute and that the dispute relates only to conclusions of law." It is clear that there was no evidence to support a finding that petitioners or any one else committed any act of violence.

Labor injunctions have been held not preempted in **Allen Bradley Local v. Wisconsin Employment Relations Board**, 315 U. S. 740; **United Auto v. Wisconsin Employment Relations Board**, 351 U. S. 271; and **Youngdahl v. Rainfair, Inc.**, 355 U. S. 131. All of these cases involved violent conduct which occurred before the injunction was issued and they all are pre **Garmon** cases.

Since no question of violence is involved the question presented here is: were the activities of either St. Louis CORE or Jefferson Bank arguably prohibited by Section 8 or protected by Section 7 of the Act? If answered in the affirmative, it is clear that the exclusive jurisdiction over such conduct and its prevention is in the NLRB. **San Diego Unions v. Garmon**, supra.

In the instant case CORE has charged racial discrimination and other unfair labor practices committed by

Jefferson Bank in violation of Sec. 8 (a) (1) and (2) and Sec. 7 of the Act[1] by attempting to restrain and coerce members of CORE in the exercise of their right to self organization, to bargain collectively and to engage in other concerted activities for the purpose of collective bargaining or their mutual aid and protection and by publicly denouncing and using state agencies including the sheriff's office, police department, Mayor of St. Louis, Governor of Missouri and a court injunction to frighten and intimidate members of CORE. **Tygart Sportswear Co.**, 77 NLRB 613; **Borg-Warner Corp.**, 113 NLRB 1288; **Aldna Mills**, 79 NLRB 1; **Biff Mfg. Co.**, 82 NLRB 1081.

The Bank alleges that CORE was guilty of unfair labor practices by violating Sec. 8 (b) (1) (A) and (B) of the Act by coercing its employees, by harassing them and by preventing their exit from and entry to the bank and by trying to force the hiring of Negro employees. **National Maritime Union**, 78 NLRB 971; **Typographical Union**, 86 NLRB 951; **NLRB v. Local 140 Furniture Workers**, 233 F. 2d 531. In addition the bank charges that CORE violated Sec. 8 (b) (4) (D) and 8 (b) (7) of the Act by trying to force them to hire Negroes in clerical positions and to recognize CORE as a bargaining agent. **Longshoremen v. Warehousemen Local 10**, 82 NLRB 650; **NLRB v. Drivers**, 362 U. S. 274.

In **Weber v. Anheuser-Busch, Inc.**, 348 U. S. 468, the Supreme Court overturned a state injunction prohibiting picketing, violence, etc., finding, even though the pickets were standing on the railroad tracks and their lives were endangered, "We do not read this as an unambiguous

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[1] Much of the proof of these allegations is not contained in the transcript because the U. S. District Court below denied petitioners an evidentiary hearing. Petitioners have never ceased to assert their innocence of the charges and that they were victims of an attempt by local authorities to destroy CORE by punishing its leaders.

determination that the IAM's conduct amounted to the kind of mass picketing and overt threats of violence which under the **Allen Bradley Local** case give the state court jurisdiction." 348 U. S. 468 at page 482. Comparing the conduct of the CORE pickets in the instant case with the union pickets in **Weber** one can readily see that here we are not faced with danger to life or limb or violence. The court's holding in **Weber** is significant in view of the fact that **Weber** is a pre-**Garmon** case. Since **Garmon**, because of conflicting and inconsistent state labor decisions, procedures and policies, this court has gone all out to guarantee primary jurisdiction to the NLRB. See **Local No. 438 Construction v. Curry**, 371 U. S. 542.

With regard to state versus NLRB jurisdiction this Court has clearly defined its policy saying, "Our concern is with delimiting areas of conduct which must be free from state regulation if national policy is to be left unhampered." **San Diego v. Garmon**, supra, at page 246. "While the Board's decision is not the last word, it must assuredly be the first." **Marine Eng. Ben. Ass'n v. Interlake**, 370 U. S. 173, 185.

Perhaps the clearest statement of this court's determination to insure a uniform application federal labor legislation can be found again in **Garmon** at page 246:

> "It follows that the failure of the Board to define the legal significance under the Act of a particular activity does not give the States the power to act. In the absence of the Board's clear determination that an activity is neither protected nor prohibited or of compelling precedent applied to essentially undisputed facts, it is not for this Court to decide whether such activities are subject to state jurisdiction. The withdrawal of this narrow area from possible state activity follows from our decisions in Weber and Guss. The governing consideration is that for the States to

control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy."

(B) The court below held that the Norris-LaGuardia anti-injunction Act, 29 USCA 101 et seq., does not apply to state courts, citing **American Dredging Co. v. Local 25**, 3 Cir., 338 F. 2d 837, 850-56 cert. den. 380 U. S. 935, as authority. The holding in **American Dredging** is clearly erroneous as pointed out by Judge Hastie in the dissenting opinion. The majority opinion cited several state court decisions, including the case at bar, but fails to cite any post **Garmon** Supreme Court decision to support its view. This failure is crucial when one considers the painstaking effort this Court has recently put forward to guarantee uniformity in the application of substantive and procedural labor policy throughout the United States.[2] See **Republic Steel Corp. v. Maddox**, 379 U. S. 650.

Recent Supreme Court decisions construing Sec. 301 of the Act and their relationship with the case at bar becomes obvious when we consider the chronological course of labor litigation. In **Textile Workers Union v. Lincoln Mills**, 353 U. S. 448, 451-54 this court construed the provision of Sec. 301 to authorize the federal judiciary to fashion and apply federal law governing collective bargaining agreements. Later the Court held that actions based upon Sec. 301 could be brought in state as well as in federal courts, **Charles Box Co. v. Courtney**, 368 U. S. 502, that in such suits state courts must apply federal law, **Local 174 Teamsters Union v. Lucas Flour Co.**, 369 U. S. 95, and that the Norris-LaGuardia Act proscription of federal injunctive relief from strikes in virtually all labor suits precludes injunctions in Sec. 301 cases. **Sinclair Ref. Co. v. Atkinson**, 370 U. S. 195. It is therefore clear that the strictures of the Norris LaGuardia Act for-

[2] Missouri has no "Little Norris LaGuardia Act" as does Wisconsin, New York and many other states.

bids injunctions in most cases (and never permits *ex parte* injunctions by private litigants) and that federal law must be applied by the state court pursuant to the holding in **Lucas Flour Co.** This position was taken in dissenting opinion of **American Dredging** where Judge Hastie stated, "Summarizing, I think the question of removability affects no substantive issue here because a state trial court, no less than a federal district court, would be bound to apply federal labor law and deny injunctive relief as was done in the Sinclair Refining case." 338 F. 2d at page 858.

This same logic is applied to **American Dredging** under **Recent Cases** in 78 Harvard Law Review 1965 where the author states at page 1667:

> "As neither the legislative history nor the language of section 301 intimates any intention to preclude state court injunctions, the decision in American Dredging seems at first blush to represent a reasonable implementation of the congressional purpose. The trouble with this line of reasoning is that it conflicts with the line of Supreme Court decisions interpreting section 301. In Local 174, Teamsters Union v. Lucas Flour Co., the Court held that the judicially created federal contract law under section 301 has pre-empted the area of collective bargaining contract law; therefore, in industries affecting interstate commerce, a state suit for an injunction arises under federal law as least with respect to questions contract interpretation. Moreover, if the Norris LaGuardia Act is part of the preemptive federal law, even the availability of injunctive relief is governed by federal law. In view of the holding in Sinclair Ref. Co. v. Atkinson that Norris-LaGuardia must be applied by the federal courts exercising their jurisdiction under section 301, it seems anomalous to hold that the act does not also apply to the state courts; for the

prohibition against injunctions is surely one of the most important aspects of federal labor policy, and is therefore as entitled to preemptive effect as the contract law governed by Lucas."

(C) The court below has erroneously applied the doctrine in **United States v. United Mine Workers**, 330 U. S. 258, to the case at bar, 362 F. 2d at pages 1005-6. This holding is in direct conflict with at least two recent Supreme Court decisions which refused to apply the **Mine Workers** decision to post **Garmon** injunction-contempt cases. **In Re Green's Petition**, 369 U. S. 689; **Ex Parte George**, 371 U. S. 72. In Green's case the facts are similar to this one. Green was convicted of violating an *ex parte* restraining order issued by a state court in connection with a labor dispute. During the contempt hearing the trial court refused to permit Green to introduce evidence pertaining to the labor dispute or to establish that the state court was acting in an area reserved for the NLRB. Likewise, in the contempt trial in the case at bar, the trial judge refused to hear evidence pertaining to the nature of the dispute and the issue of federal preemption raised in petitioners' pleadings (Tr. C. 59-74a). This court reversed Green's conviction with the following statement:

> "Even if we assume that an ex parte order could issue as a matter of state law it violates the due process requirements of the Fourteenth Amendment to convict a person of contempt of this nature without a hearing and an opportunity to establish that the state court was acting in a field reserved exclusively by Congress for the federal agency." 369 U. S. at pages 692-3.

Since the decision of the U. S. District Court denying an evidentiary hearing was affirmed by the U. S. Court of Appeals, petitioners were never granted the opportunity

to introduce evidence touching upon the nature of the controversy or the jurisdiction of the state court to issue its injunction.

(D) Perhaps the most important reason why certiorari should be granted on this issue is demonstrated by the alarming lack of serious consideration given it by the courts below. As a result, none of them has come forthrightly out and stated that this controversy involving an attempt of Negroes to gain employment is a bona fide labor dispute. The St. Louis Court of Appeals stated, "In the light of this declared public policy, and in view of the decisions of the Supreme Court of the United States in Hughes v. Superior Court of California for Contra Costa County, 339 U. S. 460, it is at least doubtful whether the petitioners' demands for the employment of four Negroes solely because of their race, may be considered a labor dispute." 374 S. W. 2d 557, 594. In **In Re Curtis' Petition** the District Court said "What might otherwise be a labor dispute between a union and an employer ceases to be a 'bona fide labor dispute' when an unlawful demand is made." 240 F. Supp. 475, 481. (The indication here is that when a white labor union makes an unlawful demand it is an unfair labor practice—when a Negro labor organization does the same it is not even a labor dispute. This is a surprising statement in light of the fact that the trial court refused to permit any evidence about the nature of the dispute and the U. S. District Court denied an evidentiary hearing on this issue.) The U. S. Court of Appeals stated in **Ford v. Boeger**, "Inasmuch as we are of the view, as hereinafter set forth, that no preemption exists under the facts of this case, we shall in the interest of not unduly prolonging this opinion assume without so deciding that CORE is a labor organization and that the dispute is a labor dispute covered by the Act." 362 F. 2d 999, 1003. Negro job demands were handled in the same way in **Potomac Electric Power Co. v. Washington**

Chapter of Congress of Racial Equality, 210 F. Supp. 418; Compare **NLRB v. Tanner Motor Livery, Ltd.**, 349 F. 2d 1.

Since racial discrimination has forced many Negro workers to seek organizational support outside of the established labor movement, any holding that does not clearly establish the right of Negroes to organize and assert their economic interest within the protection of the federal labor law would have a disastrous effect on such organizations. Even Negroes who are permitted to join white labor unions have great difficulty in getting the union officials to process their grievances in good faith. The holdings by the courts below seem to indicate that Negro job requirements, demands and activities do not rise to the stature of "bona fide labor disputes" and are therefore only "social problems"—despite the fact that Negroes like other persons must work in order to eat. This attitude is particularly unfortunate coming at a time when the pressure of the Negro for jobs, upgrading and a better life coincides with automation and new methods of production that tend to increase the percentage of unemployed of all races throughout the entire nation. The increasing competition for "Jobs Now" is bound to create more labor difficulties in the future not only in the South but also in the North where Negroes are still found at the bottom of the economic ladder. The unwritten law among many white business and civic leaders is to keep them at the bottom and thus there is great likelihood that state labor injunctions will be widely used in the future to keep "Negroes in their place" by convicting those whom local authorities consider "troublemakers" of criminal or civil contempt without benefit of a jury trial or impartial tribunal. **E. g., NAACP v. Alabama**, 377 U. S. 288; **Hamilton v. Alabama**, 376 U. S. 650; **Walker v. City of Birmingham**, 181 So. 2d 493, cert. granted 87 S. Ct. 62.

The plight of the Negro workingman who strives to break down the barriers of racial discrimination in em-

ployment is made worse by the cost of the litigation that he must incur if state courts are allowed to enjoin his activities. Large labor unions have huge financial reserves from which to employ counsel; many labor organizations have several lawyers on their full time staffs, whose job it is to represent the union before the NLRB and if necessary to appeal an adverse decision to the Supreme Court. However, racial discrimination by both labor unions and employers has forced the bulk of Negro workers to seek organizational support outside of the established labor movement.

Such groups as CORE have few if any monetary reserves upon which to finance costly litigation. Those who supported the National Labor Relations Act, 1935, found labor unions in much the same financial condition as CORE and they made provisions for the NLRB to investigate complaints and provide a remedy that heretofore had not existed.

III.

Certiorari Should Be Granted to Review the Holding That Cheff v. Schnackenberg, 384 U. S. 373 Did Not Rest on Violation of Constitutional Right to a Jury Trial But Only Upon Supervisory Power Over Federal Courts.

A.

Missouri law denies a jury trial to persons accused of criminal contempt and appellants have not waived their right to assert their claim here.

Petitioners were sentenced to terms ranging between 90 and 270 days and received fines of $500 to $1,000 plus costs of court. At the time these cases were pending before the St. Louis Circuit Court no request for a jury trial was made and it would have been useless for petitioners to request a jury trial because Missouri law denies this

right to a person accused of contempt of court. **State v. Shepherd,** 76 S. W. 79; **De May v. Liberty Foundry Co.,** 37 S. W. 2d 648. Upon conviction a judge may sentence the offender to an unlimited jail term or levy an unlimited fine or both in his discretion. See Mo. R. S., 1959, Sec. 476.120.

In view of the severity of the sentences and the fact that the judge who issued the injunction also tried the contempt cases in which petitioners had no statutory or constitutional right to a jury trial under Missouri law, it would seem that justice would require that this issue be adjudicated here.

B.

The severity of the sentences that were imposed or could have been imposed according to Missouri law required that petitioners be granted a jury trial pursuant to the sixth and fourteenth amendments to the federal constitution.

In **Cheff v. Schnackenberg,** 384 U. S. 373, this Court granted certiorari to determine whether or not a six months jail sentence, without jury, is permissible under the Sixth Amendment of the Constitution. The Court held that it was; but a sentence in excess of six months would not be permissible. The decision clearly rested on constitutional grounds and not on supervisory authority as the court below holds. See **Ford v. Boeger,** supra, at pages 1006-7.

Whether or not this construction of the Sixth Amendment is applicable to the states can be gleaned by several recent Supreme Court decisions which have made Sixth Amendment rights and standards obligatory on the states and essential to due process of law under the Fourteenth Amendment. **Gideon v. Wainwright,** 372 U. S. 335; **Pointer v. Texas,** 380 U. S. 400; **Douglas v. Alabama,** 380 U. S. 415.

Furthermore it is clear from current legislation that the United States Congress considers only fines and jail sentences of $300 or less and 45 days or less, respectively, as "petty" and not requiring a jury in criminal contempt. See Civil Rights Act, 1957, 42 U. S. C. A., Sec. 1995.

Petitioners therefore contend that the jail sentences for Curtis and Clay and all fines were constitutionally excessive and imposed in violation of their rights under the Sixth Amendment.

IV.

Certiorari Should Be Granted to Review the Holding That the Appointment of Wayne Millsap as Special Prosecutor and His Conduct During and After the Trial Did Not Rise to the Stature of Federal Constitution Rights and Therefore Petitioners Were Not Entitled to Release on the Ground That Millsap's Conduct Deprived Them of a Fair Trial.

The appointment of Wayne Millsap as "special prosecutor" and his conduct before, during and after the trials deprived petitioners in Curtis et al. of their rights under the fifth amendment and of their right to a fair and impartial trial.

The record clearly shows that the appointment of Wayne Millsap as "special prosecutor" for the Court substantially prejudiced the right of petitioners to a fair and impartial trial for the following reasons:

1. Wayne Millsap was the lawyer for Jefferson Bank and Trust Co. He initiated the contempt proceedings by direction of the Board of Directors of the Bank (Tr. 120). He is the son-in-law of the bank's president, Dillon Ross, and a director of the bank. He and the bank had a pecuniary interest in the outcome of the trials which were allegedly held to "vindicate the majesty of the law

and the dignity of the court". This pecuniary interest stemmed from two sources: (1) The Jefferson Bank and CORE were engaged in a conflict of economic interest over the hiring of Negroes. Anytime one party to a labor controversy is given unfair advantage over the other, he can exterminate his opponent or competitor whether one runs the other one out of business or manages to have him sentenced to a jail term. The same interests are at stake in all labor disputes—if one side can win out over the other, great benefits accrue to the victorious party. (2) The bank would be liable for damages for false arrest or malicious prosecution if petitioners were acquitted. This position is taken in 42 Am. Jur. 11 at page 243:

> "And in some jurisdictions statutes have been enacted which expressly forbid assistance of any attorney in a criminal prosecution if he is interested in a civil action in which a recovery might be had on what is involved in the criminal prosecution."

It should be noted that no one has contended that "impartial" or "disinterested" persons were unavailable to perform this function for the court. However, the special interest of Millsap explains why he did everything in his power to inflame the public against petitioners and to deny them a fair and impartial hearing, both during the trials and while writs of habeas corpus were pending in the St. Louis Court of Appeals. "A fair trial in a fair tribunal is a basic requirement of due process." **In re Murchison**, 349 U. S. 133, 136.

2. In R. S. Mo. 1959, Supreme Court Rule 4.20, we find the following admonition:

> "4.20. Newspaper Discussion of Pending Litigation. Newspaper publication by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be con-

demned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An ex parte reference to the facts should not go beyond quotation from the records and papers on file in the Court; but even in extreme cases it is better to avoid any ex parte statement."

In spite of the Canons of Ethics regulating the conduct of Missouri lawyers, Wayne Millsap issued numerous denunciations of CORE through the media of radio, television and the press.

Adverse publicity may prejudice a defendant's constitutional rights even when a case is tried before a judge without jury.[1]

This situation can be further aggravated when a judge who issues an injunction is also the trial judge in contempt proceedings for its violation. And because judges are frequently the object of great pressures from the press, they have frequently held offenders in contempt of court. **Toledo Newspaper Co. v. United States,** 247 U. S. 402; **Bridges v. California,** supra; **Pennekamp v. Florida,** supra. In **Estes v. Texas,** 381 U. S. 548, 549, Justice Clark affirms this point:

"Our judges are high-minded men and women. But it is difficult to remain oblivious to the pressure that

[1] The Public Trial and Free Press, William O. Douglas, 33 Rocky Mountain Law Review 1, 2, 3, "Newspapers, radio and television are in the hands of men who have their own political philosophy and their own ideas as to what justice is and how it should be administered. Some newspapers dominate a community. When ownership of the radio and television station, the community may become saturated with one point of view. We have had publishers who were tyrants and sought to impose their will on the courts as well as on the people . . . Even federal judges who have life tenure may feel the lash of editorials demanding that cases be decided this way or that.

". . . At times the papers can help to arouse passions in a community so that no trial can be a fair one."

news media can bring to bear on them both directly and through the shaping of public opinion."

In light of the foregoing authorities it is clear that: (1) A defendant's right to a fair trial is constitutionally protected from adverse public comment. (2) The probability of prejudice is sufficient to gain a new trial—actual prejudice is not required. (3) Both judges and juries can be influenced by unfair pressures.

The following facts could have been presented at an evidentiary hearing.

During the campaign for jobs at Jefferson Bank, CORE and petitioners were subjected to a continuing stream of public attacks by the local newspapers, television and radio stations. These attacks lasted throughout the trials and while petitioner's writs of habeas corpus were pending in the St. Louis Court of Appeals.

In addition to daily public comments by Millsap, statements were made by Mayor Raymond Tucker, Governor John Dalton, Donald Gunn, President of the Board of Alderman, State Senators Michael Kenney and Theodore McNeal, all of whom were influential political leaders.

Between August 28, 1963, and January 16, 1964, the St. Louis Globe Democrat (the city's only morning newspaper) printed 14 editorials and 17 separate smear articles denouncing and holding petitioners up to public ridicule. Seven of these editorials and five smear articles were published in the **Globe** during the month of October, 1963. Two of them were captioned "Bank Demonstration Leader is Convicted Morals Offender" and "Move to Disbar CORE Lawyer Here". They were apparently timed to apply pressure on Judge Scott and to inflame the public against petitioners before judgment and sentencing on October 24. The last ten smear articles entitled "Communism in CORE" beginning December 27, 1963, and

ending January 5, 1964, were designed to influence the St. Louis Court of Appeals before their decision on petitioners' writs of habeas corpus on January 15, 1964. Almost all of these smear articles were prominently displayed on the front page of the Globe.

During the trial of petitioners in **Ford et al.**, the **Globe, Post-Dispatch, Argus,** and **American** published a large paid advertisement entitled "Facts on Jefferson Bank and Fair Employment". This ad sought to discredit petitioners and to mobilize public opinion on the side of the bank and against petitioners. It was printed before Judge Scott had announced his decision in the three contempt cases.

Immediately after the Court sentenced petitioners on October 24, defense counsel announced their intention to seek review of the convictions in the St. Louis Court of Appeals. In spite of the pending review and the fact that complaints had been filed with Missouri Bar, against Curtis, Oldham and Howard, the executive committee of the St. Louis Bar Association, **while Wayne Millsap was a member of that body,** authorized John Shepherd, president to issue a press release denouncing what they termed petitioners' "lawlessness" and "contempt for the law". It is noteworthy that more than 10,000 serious crimes, including robbery, murder, rape and aggravated assault are committed in St. Louis every year; however, the St. Louis Bar with all its power, influence and prestige chose to direct its attack at petitioners.

Throughout the entire period before and during all three trials Judge Scott failed to take any action to curb Millsap or the press media. Comment about the pending cases was totally unhindered by any governmental or private authority. Judge Scott appointed Millsap as "special prosecutor" after a television appearance August 30, in which Millsap made a scathing attack on petitioners. See **Shepard v. Maxwell,** 384 U. S. 333.

In many cases it is difficult to ascertain what effect adverse publicity had on a particular trial. This case speaks for itself. We need only to look to the sentence of James Peake to arrive at a decision. Peake is a paraplegic. A wheel chair in his only means of locomotion. He was convicted of failing to wheel himself out of the bank. For this "crime" Judge Scott reserved his longest sentence, one year in a 4 x 8 cell at the City Jail. These sentences were so outrageous that the **Globe** found it necessary to bolster Judge Scott's public image. On October 26, 1963, the Globe printed a feature article on the front page entitled "Judge Scott Is a Man of Rare Ability". Two days later an editorial appeared with the caption "Kind of Judge He Is". The fact that bail for petitioners in **Curtis et al.** was set at $10,000 (bail set by U. S. Court of Appeals, 8 Cir., was $500 after conviction) and that Judge Scott refused to lower this figure even though petitioners voluntarily surrendered themselves into the custody of the Sheriff after reading about the attachment order in the Newspaper (Tr. C, 22-25, 9-3-63); that he attempted to proceed to trial on September 3, without informing petitioners of the charges and without time to consult with counsel (Tr. C, 14-21, 9-3-63), leads to the inescapable conclusion that a formidable array of influential personalities and interests from the Governor to Millsap and from the Globe-Democrat to the St. Louis Bar Association caused the trials of petitioners to be conducted in an atmosphere of tension and hostility which effectively deprived petitioners of a fair trial before a fair tribunal.[2]

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[2] The following additional statements by Millsap were submitted to the Court below as offers of proof in case the Court saw fit to grant an evidentiary hearing:

8/28/63. Post-Dispatch—Millsap "to hire a certain number of Negroes would violate Missouri and St. Louis Fair Employment Laws. Demonstrations may impede progress of Negroes."

8/30/63 KMOX-TV-KSD-TV—Millsap "Leadership of CORE consists of attorneys. Ray Howard, said that there would be

Millsap (with knowledge that he intended to press charges for criminal contempt) took petitioners' depositions on the 7th and 8th of September under the rules of civil procedure (Tr. C, 39; 9-3-63). Petitioners in **Curtis**

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a peaceful demonstration. He represented to the Court that there was never any violence at a CORE demonstration. We didn't have to allow picketing but it was allowed because we believed Mr. Howard. The lawyers in CORE violated the ethics of their profession in precipitating this dastardly deed. This is the worst contempt of judicial orders ever done in the city. The law was clear to all of the demonstrators. The court could fine and imprison persons who are in contempt. Also with regard to the lawyers this matter will be taken up with the bar association. Mr. Howard said that only a small number of picketers would be there at the bank. Mr. Howard, Mr. Curtis and Mr. Oldham violated the court order. This matter will be taken up with the bar association. The court will enforce the order of the court."

8/31/63 Post-Dispatch—Millsap "flagrant violation of court order; Ray Howard misrepresented himself to the court."

9/12/63 KSD-TV—Millsap "We will not be coerced into hiring Negroes; we will work with the Mayor's Council on Human Relations." McConnell "People on picket line are not qualified."

10/11/63 Post-Dispatch, Globe-Democrat, Argus, American "Facts on Jefferson Bank and Fair Employment." This paid ad was published during the trial of Ford et al.

10/11/63 KMOX-TV-KSD-TV—Joint press conference with Millsap, Ross, and McConnell Persons on picket line were referred to as "animals".

10/15/63 KMOX-TV—Millsap "Bank has not refused to meet with anyone but will never meet with CORE." Other statements by McConnell and Ross.

10/27/63 Post-Dispatch, Globe-Democrat—Statement by John Shepherd, President of St. Louis Bar Association. "Contempt for the law and the courts breeds anarchy. No matter how distasteful to individual citizens, a judgment of a court having full jurisdiction must be obeyed. This is a basic tenet of our system of government. Lawyers as officers of the courts have a special duty to uphold judgments and urge compliance therewith.

"Any doctrine which is based on defiance of court orders can never be justified in our society, regardless of the end result sought by such defiance. Such orders are always subject to review by ordinary judicial processes.

"The Bar Association of St. Louis, composed of almost 2000 lawyers, believes firmly in the above principles and looks with dismay upon any efforts to subvert them."

et al. were led to believe that the charges were for civil contempt and thus were effectively deprived of their right not to testify against themselves. The right of an accused not to give evidence against himself is protected from state infringement by the Fifth and Fourteenth Amendments. **Malloy v. Hogan,** 378 U. S. 1; **Griffin v. California,** 380 U. S. 609.

It was after these depositions were taken that Millsap filed notices of criminal contempt.

As if these pre-trial tactics were not sufficient deprivation of petitioners' constitutional rights, Millsap introduced in evidence parts of the depositions as "admissions against interest" (Tr. C, 1128). Defense counsel objected to their admission but were overruled (Tr. C, 1135-44). Because of this adverse ruling petitioners were compelled to introduce the entire depositions in order to correct the factual distortions created by the admission of selected parts. Judge Scott clearly claimed the right to consider petitioners' involuntary statements in arriving at his judgment.[3]

It would be a gross understatement to assert that Millsap's conduct before, during and after the trials did not measure up to the best traditions of a lawyer advocate. About such matter Mr. Justice Sutherland had this to say in **Berger v. United States,** 295 U. S. 78, at page 88:

> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and

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[3] In Estes v. Texas, 85 S. Ct. 1628, Mr. Chief Justice Warren had this to say in a concurring opinion: "In Lyons v. Oklahoma, 322 U. S. 596, this Court held that if an involuntary confession is introduced into evidence the conviction must be reversed, even though there is other evidence in the record to justify a verdict of guilty."

whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is guilt shall not escape or innocense suffer. He may prosecute with earnestness and vigor—indeed he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

CONCLUSION.

For the reasons herein set out petitioners urge this Court to grant this petition for certiorari to the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

CHARLES R. OLDHAM,
Room 326—706 Chestnut,
St. Louis, Missouri,
Attorney for Petitioners.

ROBERT B. CURTIS,
2847 Union Boulevard,
St. Louis, Missouri,
Pro Se.